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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No. 170412391-7391-01]

RIN 0648-BG84

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; American Fisheries Act; Bering Sea and Aleutian Islands Crab Rationalization Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 48 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) and a regulatory amendment to revise regulations implementing the American Fisheries Act (AFA) Program and the Crab Rationalization (CR) Program. This proposed rule would revise how NMFS determines the amount of limited access privileges held and used by groups in the Western Alaska Community Development Quota Program (CDQ Program) for the purposes of managing the excessive share limits under the AFA Program and the CR Program. This proposed rule is necessary to align regulations and the Crab FMP to be consistent with an amendment to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and NMFS' current method of managing excessive share limits for CDQ groups in the AFA Program and the CR

Program. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Act, the Crab FMP, and other applicable law.

DATES: Submit comments on or before [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Submit comments, identified by docket number NOAA-NMFS-2017-0038, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0038, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 48 to the Crab FMP, the Regulatory Impact Review (RIR), and the Categorical Exclusion prepared for this proposed action are

available from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

The CR Program Environmental Impact Statement (EIS), RIR, and Final Regulatory Flexibility Analysis, as well as the AFA Program EIS and RIR, are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the pollock fisheries in the exclusive economic zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). NMFS manages the king and Tanner crab fisheries in the U.S. EEZ of the Bering Sea and Aleutian Islands (BSAI) under the Crab FMP. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the BSAI FMP and the Crab FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing and implementing the BSAI FMP appear at 50 CFR parts 600 and 679. Regulations governing and implementing the Crab FMP appear at 50 CFR parts 600 and 680.

A notice of availability for Amendment 48 to the Crab FMP was published in the *Federal Register* on August 3, 2017. Comment on Amendment 48 is invited through October 2, 2017. All relevant written comments received by the end of the comment period, whether specifically directed to the FMP amendment, this proposed rule, or both, will be considered in the approval/disapproval decision for Amendment 48 and addressed in the response to comments in the final rule.

Background

This proposed rule would modify regulations that specify how NMFS determines holding and use of limited access privileges (LAPs) for the purposes of managing excessive share limits for CDQ groups under the AFA Program and the CR Program. The Magnuson-Stevens Act requires NMFS to establish excessive share limits to prevent excessive consolidation of harvesting and processing LAPs in order to maintain an appropriate distribution of economic and social benefits for fishery participants and communities. NMFS has adopted regulations under its LAP programs to ensure that no person holds or uses more LAPs than authorized under excessive share limits established for each LAP program. Section 305(i) of the Magnuson-Stevens Act describes the Western Alaska Community Development Quota Program (CDQ Program) (16 U.S.C. 1855(i)). Regulations at 50 CFR 679.2 define the term “CDQ group” as an entity identified as eligible for the CDQ Program under 16 U.S.C. 1855(i)(1)(D).

This proposed rule would revise the regulations that prescribe the calculation of excessive share limits for CDQ groups for two LAP programs: the AFA Program and the CR Program. CDQ groups participate in LAP programs, including the AFA and the CR Program, by purchasing harvesting and processing privileges and through ownership of vessels and processors that participate in these fisheries. The Magnuson-Stevens Act was amended by the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241; the Coast Guard Act) to specify the method that NMFS must use for monitoring excessive share limits as they apply to CDQ groups—the proportional or “individual and collective” rule. Section 305(i)(1)(F)(i) of the Magnuson-Stevens Act, as amended by the Coast Guard Act, provides that CDQ groups shall be subject to any excessive share

ownership, harvesting, or processing limitations in the fisheries of the Bering Sea and Aleutian Islands Management Area only to the extent of the CDQ group's proportional ownership (16 U.S.C. 1855(i)(1)(F)(i)).

NMFS has implemented in practice the method specified in the 2006 amendment to the Magnuson-Stevens Act for CDQ groups to monitor excessive share limits in the AFA Program and the CR Program; however, the regulations for the AFA Program and the CR Program and the Crab FMP have not been revised to be consistent with the 2006 amendment to the Magnuson-Stevens Act.

The following sections describe 1) excessive share limits, which are also called holding and use caps, 2) AFA Program use caps, 3) CR Program holding and use caps, 4) CDQ Program holding and use caps, and 5) this proposed rule and the anticipated effects of the action.

Excessive Share Limits

Section 301(a)(4) of the Magnuson-Stevens Act specifies that if conservation and management measures allocate or assign fishing privileges, the measures must be carried out so that no particular individual, corporation, or other entity acquires an excessive share of such privileges (16 U.S.C. 1851(a)(4)). Section 303A(c)(5)(D) of the Magnuson-Stevens Act requires regional fishery management councils to establish excessive share limits for LAP programs to prevent excessive accumulation of privileges by participants in the LAP programs (16 U.S.C. 1853a(c)(5)(D)). The intent of these limits or caps is to prevent excessive consolidation in the harvesting and processing sectors in order to maintain an appropriate distribution of economic and social benefits for fishery participants and communities. Because determination of excessive shares

must consider the specific circumstances of each fishery, the Council has implemented different excessive share limits in the LAP programs in Alaska's fisheries, including the AFA and CR Programs.

NMFS implemented use caps for the AFA Program in 2002 (67 FR 79692; December 30, 2002) and holding and use caps for the CR Program in 2005 (70 FR 10174; March 2, 2005). The regulations prohibit a person from using more than the harvesting and processing limits established in the AFA Program and from holding and using more than a specific portion of the LAPs allocated under the CR Program. Under 50 CFR 679.2, "person" includes individuals, corporations, partnerships, associations, and other non-individual entities. To monitor holdings and use of LAPs, NMFS determines what portion of a program's harvesting and processing privileges a person holds and uses to ensure that no person holds or uses more privileges than authorized by the applicable excessive share cap.

NMFS determines a person's holding and use of a LAP in the AFA Program and CR Program by summing 1) the amount directly held and used by that person, and 2) the amount held and used by that person indirectly through an ownership interest in or control of another entity that also holds and uses the LAP. Businesses that hold and use LAPs in the AFA Program and the CR Program are often composed of multiple owners that have ownership interests in multiple fishing businesses. In cases where a LAP is held by a business entity with more than one owner, NMFS applies the holding and use caps to each entity that holds or controls the LAP to monitor whether those entities each exceed the established caps. Ownership attribution refers to the method NMFS uses to assess the relationships between different entities that participate in LAP programs.

NMFS uses two ownership attribution methods to determine holdings and use of LAPs. These two methods for attributing ownership and use of a LAP are commonly known as the “individual and collective rule” and the “10-percent rule.” Under the individual and collective rule, NMFS attributes holding and use of LAPs by one person proportionally to their ownership in or control of another entity that holds and uses LAPs. For example, if Company A has a 15 percent ownership of Company B that holds LAPs, Company A would be attributed 15 percent of Company B’s holding and use of the LAPs. In contrast, under the 10-percent rule, a person is attributed 100 percent of an entity’s LAPs if that person owns or otherwise controls ten percent or more of that entity. Thus, if Company A holds or controls 10 percent or more of Company B, then 100 percent of Company B’s holdings and use of LAPs are attributed to Company A. When a person owns or controls 10 percent or more of another entity, the individual and collective rule is less restrictive than the 10-percent rule because a person is only attributed holding and use in proportion to how much that person owns or controls of other entities, rather than attributing 100 percent of the other entity’s LAP holdings once the 10-percent ownership or control threshold is met. Thus, under a holding and use cap, the individual and collective rule would allow a person to hold and use more LAPs than if the person was evaluated using the 10-percent rule.

AFA Program Use Caps

Congress passed the AFA in October 1998 to implement additional U.S. ownership requirements for vessels harvesting fish from the EEZ. The purpose of the AFA was to tighten U.S. ownership standards that had been exploited under the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Public Law 100–239)

and to provide the BSAI pollock fleet the opportunity to conduct their fishery in a more rational manner (i.e., stopping the race for fish) while protecting non-AFA participants in the other fisheries. The AFA established sector allocations in the BSAI pollock fishery, determined eligible vessels and processors, allowed for the formation of cooperatives, set limits on the participation of AFA vessels in other fisheries, and imposed special catch weighing and monitoring requirements on AFA vessels. The AFA also divided the available BSAI pollock directed fishing allowance among three harvesting sectors, after CDQ allocations and an amount for incidental catch of pollock by non-AFA vessels were deducted.

Section 210(e) of the AFA set out excessive harvesting and processing limits for participants. Section 210(e)(1) of the AFA restricts an individual, corporation, or other entity to harvesting no more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery. This limit is codified at 50 CFR 679.20(a)(5)(i)(A)(6). Every year, this limit is published in the annual harvest specifications (82 FR 11826; February 27, 2017).

Section 210(e)(2) of the AFA directed the Council to create management measures to prevent any particular individual or entity from processing an excessive share of pollock available in the directed pollock fishery. The Council and NMFS set this limit at 30 percent of the sum of the directed fishing allowances for pollock. This limit is codified at 50 CFR 679.20(a)(5)(i)(A)(7). Every year, this limit is published in the annual harvest specifications (82 FR 11826; February 27, 2017).

Section 210(e)(3) of the AFA also specified that any entity in which 10 percent or more of the interest is held or controlled by another individual or entity shall be

considered to be the same entity as the other individual or entity for purposes of monitoring the harvesting and processing use caps. This section of the AFA directed NMFS to use the 10-percent rule to determine the use of AFA Program harvesting and processing privileges. NMFS implemented this AFA requirement in part by defining an “AFA entity” at 50 CFR 679.2 as a group of affiliated individuals, corporations, or other business concerns that harvest or process pollock in the Bering Sea directed pollock fishery. The proposed rule to implement the AFA Program stated that the concept of “affiliation” is central to the definition of “AFA entity” (66 FR 65028, 65049; December 17, 2001). As the December 2001 proposed rule explained, “affiliation” means a relationship between two or more individuals, corporations, or other business concerns in which one concern directly or indirectly owns a 10 percent or greater interest in the other, exerts 10 percent or greater control over the other, or has the power to exert 10 percent or greater control over the other; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts 10 percent or greater control over both, or has the power to exert 10 percent or greater control over both (see regulations at § 679.2 for the definition of “affiliation” and Section 2.6.3 of the RIR for more information).

CR Program Use Caps

The CR Program was implemented on April 1, 2005 (70 FR 10174; March 2, 2005). The CR Program established a LAP program for nine crab fisheries in the BSAI and assigned quota share (QS) to persons based on their historic participation in one or more of those nine BSAI crab fisheries during a specific period. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total

allowable catch (TAC). This annual exclusive harvest privilege is called individual fishing quota (IFQ).

NMFS also issued processor quota share (PQS) under the CR Program. Each year, PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. Each year there is a one-to-one match of the total pounds of IFQ that must be delivered to a processor with IPQ with the total pounds of IPQ issued in each crab fishery.

When the Council recommended the CR Program, it expressed concern about the potential for excessive consolidation of QS and PQS, in which too few persons control all of the QS or PQS and the resulting annual IFQ and IPQ. The Council determined that excessive consolidation could have adverse effects on crab markets, price setting negotiations between harvesters and processors, employment opportunities for harvesting and processing crew, tax revenue to communities in which crab are landed, and other factors considered and described in the CR Program EIS. To address this concern, the CR Program includes limits on the amount of QS and PQS that a person can hold and the amount of IFQ and IPQ that a person can use.

The CR Program has QS and IFQ holding and use caps that vary by fishery because of different fleet characteristics and differences in historical dependency of participants on different crab fisheries. 50 CFR 680.42(a)(2) specifies that NMFS uses the individual and collective rule to apply holding and use caps for QS and IFQ for all

CR Program participants, including CDQ groups, as recommended by the Council for monitoring harvesting privileges (see Section 2.7 of the RIR for more information).

For processing privileges, the CR Program limits a person to holding no more than 30 percent of the PQS initially issued in the fishery, and to using no more than the amount of IPQ resulting from 30 percent of the PQS initially issued in a given fishery, with a limited exemption for persons receiving more than 30 percent of the initially-issued PQS (50 CFR 680.42(b)). 50 CFR 680.42(b)(3) specifies that NMFS uses the 10-percent rule to monitor holding and use caps for PQS and IPQ for all CR Program participants as recommended by the Council and addressed in the preamble to the proposed rule for the CR Program (69 FR 63200, 63219 & 63226; October 29, 2004).

Use Caps for CDQ Groups

The CDQ Program was established by the Council and NMFS in 1992, and in 1996, authorization for the Program was incorporated into the Magnuson-Stevens Act. The purpose of the CDQ Program is 1) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the BSAI, 2) to support economic development in western Alaska, 3) to alleviate poverty and provide economic and social benefits for residents of western Alaska, and 4) to achieve sustainable and diversified local economies in western Alaska (16 U.S.C. 1855(i)(1)(A)).

Section 305(i) of the Magnuson-Stevens Act describes the CDQ Program and identifies the villages eligible to participate in the CDQ Program through the six entities specified in Section 305(i)(1)(D) as the CDQ groups (16 U.S.C. 1855(i)). Regulations at 50 CFR 679.2 define the term “CDQ group” as an entity identified as eligible for the CDQ Program under 16 U.S.C. 1855(i)(1)(D). The CDQ Program consists of six

different non-profit managing organizations (CDQ groups) representing different geographical regions in Alaska. The CDQ Program receives annual allocations of TACs for a variety of commercially valuable species in the BSAI groundfish, crab, and halibut fisheries, which are in turn allocated among the CDQ groups (see Section 2.8 of the RIR).

The Secretary of Commerce approved regulations establishing the CDQ Program pollock allocation (57 FR 54936; November 23, 1992). When the AFA Program was implemented, the CDQ Program received an allocation of 10 percent of the Bering Sea pollock TAC (67 FR 79692, 79696; December 30, 2002). CDQ groups participate in the AFA Program primarily through ownership (wholly or partially) in vessels authorized to fish for Bering Sea pollock under the AFA. Vessel ownership varies by CDQ group (see Section 2.8.1 of the RIR). When the CR Program was implemented in 2005, the CDQ Program received an allocation of 10 percent of the TACs for some CR Program fisheries (70 FR 10174, 10176-77; March 2, 2005). In addition to the CDQ allocations, the CDQ groups hold QS and PQS directly as well as indirectly through ownership in other entities that hold QS and PQS (see Section 2.8.3 of the RIR).

Need for This Proposed Rule

In 2006, Congress passed the Coast Guard Act (Public Law 109–241), which amended the CDQ Program to give CDQ groups and their communities greater autonomy based on recommendations from the State of Alaska’s Blue Ribbon Panel. Section 416(a) of the Coast Guard Act revised section 305(i) of the Magnuson-Stevens Act and made significant changes to the management and oversight of the CDQ Program. The amendments to section 305(i) of the Magnuson-Stevens Act were intended to promote the ability of CDQ groups to responsibly manage their allocations similar to the LAPs

provided by NMFS to most other participants in the BSAI fisheries, while promoting the goals of the CDQ Program (see Section 2.8 of the RIR).

The Coast Guard Act also revised section 305(i)(1)(F)(i) of the Magnuson-Stevens Act to specify that CDQ groups would be subject to excessive share ownership, harvesting, and processing limitations proportional to their ownership of entities holding such privileges (i.e., holdings and use of LAPs by CDQ groups are to be determined by the “individual and collective rule”) (16 U.S.C. 1855(i)(1)(F)(i)). This requires NMFS to use the individual and collective rule to determine holding and use of harvesting and processing privileges for CDQ groups under all LAP programs in the BSAI. After the 2006 amendment to the Magnuson-Stevens Act, NMFS reviewed its methods for determining holding and use of harvesting and processing privileges in all LAP programs in the BSAI and determined that modifications were required for the methods used to determine CDQ group holdings and use for 1) harvesting and processing privileges under the AFA and 2) PQS and IPQ under the CR Program. These modifications were required because the regulations implementing these programs specified that NMFS would use the 10-percent rule to determine holding and use of these harvesting and processing privileges for CDQ groups.

This Proposed Rule and its Anticipated Effects

This proposed rule would revise 50 CFR 679.2, 679.7(k)(6) and (7), 680.2, and 680.42(b).

This proposed rule would revise the AFA Program to specify that NMFS uses the individual and collective rule for CDQ groups to attribute harvesting and processing privileges of AFA pollock proportionally to the CDQ groups’ ownership of vessels and

processors active in those fisheries. For example, if a CDQ group holds 15 percent ownership of an entity that holds and uses AFA harvesting and processing privileges, this proposed rule would specify that the CDQ group is attributed 15 percent of the harvest or processing privileges of that company for purposes of monitoring excessive harvesting and processing use caps under the AFA.

The proposed rule would also implement Amendment 48 to the Crab FMP and revise the CR Program to specify that NMFS uses the individual and collective rule for CDQ groups to attribute holding and use of PQS and IPQ based on the CDQ groups' proportional ownership of entities that hold and use PQS and IPQ. For example, if a CDQ group holds 15 percent ownership of a company that holds or uses PQS or IPQ, this proposed rule would specify that the CDQ group is attributed 15 percent of the holding or use of that PQS or IPQ. The proposed rule would not alter the regulations for the QS and IFQ holding and use caps under the CR Program because current CR Program regulations specify that NMFS uses the individual and collective rule for all program participants, including CDQ groups, to attribute any participants' holding and use of QS and IFQ based on their proportional ownership of entities that hold and use QS and IFQ.

NMFS has used the individual and collective rule for CDQ group ownership attribution for both the AFA Program and the CR Program since enactment of the Coast Guard Act; however, the regulations and the Crab FMP have not been updated to reflect this change. This proposed rule would update the regulations and the Crab FMP to be consistent with NMFS' current method of ownership attribution for CDQ groups and the Magnuson-Stevens Act. This proposed rule would benefit CDQ groups and the public by clarifying the method NMFS uses to attribute holding and use of harvesting and

processing privileges by CDQ groups for purposes of monitoring holding and use caps for the AFA and CR Programs.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 48, the Crab FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866. The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS requests comments on the decision to certify this proposed rule. The factual basis for this determination is as follows:

This proposed action would revise regulations and the Crab FMP so that they are consistent with the ownership attribution method mandated by the Magnuson-Stevens Act for CDQ groups for monitoring limitations on the holding and use of harvesting and processing privileges in the AFA and CR Programs.

The CDQ groups would be the directly regulated entities under the proposed regulatory revisions. All six of the CDQ groups are non-profit corporations and are considered small entities under the Regulatory Flexibility Act. As NMFS, one of the agencies that manages these holding and use limitations, has already implemented these

provisions of the Magnuson-Stevens Act in practice, this proposed action is not expected to materially change how any small entities are regulated, nor is the proposed action expected to impose significant compliance costs or materially change how any small entities comply with the applicable regulations. Rather, this proposed rule would benefit CDQ groups and the public by clarifying the method NMFS uses to attribute holding and use of harvesting and processing privileges by CDQ groups for purposes of monitoring holding and use caps for the AFA and CR Programs. This proposed action therefore is not expected to have a significant economic impact on a substantial number of the small entities regulated by this proposed action—the CDQ groups. As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

The economic analysis contained in the RIR for this action (see **ADDRESSES**) further describes the regulatory and operational characteristics of the CDQ Program, including the participation of CDQ groups in the AFA Program and the CR Program, the history of this action, and the details of the alternatives considered for this action, including the preferred alternative.

Recordkeeping and Reporting Requirements

This rule references collection-of-information requirements subject to the Paperwork Reduction Act (PRA), which have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0514. The annual application for a crab IFQ permit and the application for a crab IPQ permit are mentioned in this rule; however, there are no changes to these forms or to who is required to submit the forms for this proposed rule, and therefore there would be no change in burden or cost.

Send comments on these or any other aspects of the collection of information, to NMFS (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at:

http://www.cio.noaa.gov/services_programs/prasubs.html.

Federal Rules that may Duplicate, Overlap, or Conflict with this Proposed Rule

No relevant Federal rules have been identified that would duplicate, overlap, or conflict with this proposed rule.

List of Subjects

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 680

Alaska, Reporting and recordkeeping requirements.

Dated: August 15, 2017.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 and part 680 as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF
ALASKA**

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

2. In § 679.2, revise the definitions for “AFA entity” and “Affiliation for the purpose of defining AFA and the Rockfish Program” to read as follows:

§ 679.2 Definitions.

* * * * *

AFA entity means a group of affiliated individuals, corporations, or other business concerns, except for a CDQ group, that harvests or processes pollock in the BS directed pollock fishery.

* * * * *

Affiliation for the purpose of defining AFA and the Rockfish Program means a relationship between two or more individuals, corporations, or other business concerns, except CDQ groups, in which one concern directly or indirectly owns a 10 percent or greater interest in another, exerts control over another, or has the power to exert control over another; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts control over both, or has the power to exert control over both.

* * * * *

3. In § 679.7 revise paragraphs (k)(6) and (k)(7) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(k) * * *

(6) *Excessive harvesting shares.* It is unlawful for an AFA entity or a CDQ group to harvest, through a fishery cooperative or otherwise, an amount of BS pollock that exceeds the 17.5 percent excessive share limit specified under § 679.20(a)(5)(i)(A)(6). A CDQ group's harvest of BS pollock will be calculated through its proportional ownership of individuals, corporations, or other business concerns that harvest BS pollock. The owners and operators of the individual vessels comprising the AFA entity or CDQ group that harvest BS pollock will be held jointly and severally liable for exceeding the excessive harvesting share limit.

(7) *Excessive processing shares.* It is unlawful for an AFA entity or a CDQ group to process an amount of BS pollock that exceeds the 30-percent excessive share limit specified under § 679.20(a)(5)(i)(A)(7). The amount of BS pollock processed by a CDQ group will be calculated through its proportional ownership of individuals, corporations, or other business concerns that process BS pollock. The owners and operators of the individual processors comprising the AFA entity or CDQ group that process BS pollock will be held jointly and severally liable for exceeding the excessive processing share limit.

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**PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE
OFF ALASKA**

4. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

5. In § 680.2, revise the introductory text to the definition for “Affiliation” and the introductory text of paragraph (1) of the definition for “Affiliation” to read as follows:

§ 680.2 Definitions.

* * * * *

Affiliation means a relationship between two or more entities, except for CDQ groups, in which one directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, another, or a third entity directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, both. For the purpose of this definition, the following terms are further defined:

(1) *Entity*. An entity may be an individual, corporation, association, partnership, joint-stock company, trust, or any other type of legal entity, except for a CDQ group, any receiver, trustee in bankruptcy or similar official or liquidating agent, or any organized group of persons whether incorporated or not, that holds direct or indirect interest in:

* * * * *

6. In § 680.42, revise paragraphs (b)(3)(ii), (b)(3)(iii), and (b)(3)(iv) to read as follows:

§ 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

* * * * *

(b) * * *

(3) * * *

(ii) Is not a CDQ group and directly or indirectly owns a 10 percent or greater interest in an entity that holds PQS.

(iii) A person that is not a CDQ group and holds PQS is limited to a PQS use cap that is calculated based on the sum of all PQS held by that PQS holder and all PQS held by any affiliate of the PQS holder. A CDQ group that holds PQS is limited to a PQS use cap that is calculated based on the sum of all PQS held, individually or collectively, by that CDQ group.

(iv) A person that is not a CDQ group and holds IPQ is limited to an IPQ use cap that is calculated based on the sum of all IPQ held by that IPQ holder and all IPQ held by any affiliate of the IPQ holder. A CDQ group that holds IPQ is limited to an IPQ use cap that is calculated based on the sum of all IPQ held, individually or collectively, by that CDQ group.

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